since there is always the strong probability that in giving evidence, particularly for the Prosecution, he would hope for a light sentence or even for the charge against him to be totally withdrawn. It can reasonably be argued that by postponing sentence, the sword of Damocles would be held over his head in order to induce him to give favourable evidence for the Prosecution. Whereas, no such probability can exist once he has been dealt with by the court.

Having considered the two authorities, it is my view that where a co-accused pleads guilty before the commencement of trial, it is desirable for the court to enquire whether the Prosecution or the remaining co-accused wish to call him as their witness. If either the Prosecution or the Defence intimated that they wished to do so, I think it is desirable in the interest of justice that the court should not postpone sentence, but should proceed to dispose of the case, before removing him altogether from the court. But if neither party requires him as a witness, sentence should be postponed until after the trial against the remaining co-accused has been completed. This would avoid the "awkward situation" that might arise where two accused are charged for committing an offence jointly, as envisaged by Hashim Yeop A. Sani J. in *Lee Weng Sang* v. *Public Prosecutor*.[3] In the present appeal, there were three persons jointly charged and no "awkward situation" could arise as to whether the remaining two accused had committed the gang robberies jointly as a result of the first accused pleading guilty. Further, in *Lee Weng Sang case*, it would appear that the co-accused who pleaded guilty was not required as a witness and, as such, it was only proper that sentence against him ought to be postponed. But in the present appeal, the first accused who pleaded guilty was required by the Prosecution and did in fact appear as a Prosecution witness. In that event, I hold that it is not wrong in law for the learned President to dispose of his case immediately. The fact that the learned President had recorded the brief facts of the Prosecution case would not, in my view, be prejudicial to the Appellant, because as correctly stated by the learned President that even if the Appellant and the second accused were to be tried before another President, it would still be open to the Prosecution to elicit from him the facts of the Prosecution case including the fact that he has pleaded guilty to the charge. Apart from other inconvenience that might arise, I can see no useful purpose in having their case heard before another President. In the circumstances, I hold that the learned trial President did not err in law in taking the course he did when the first accused pleaded guilty. His refusal to allow the application for Appellant's case to be heard before another President is also not wrong in law.

For the above reasons, the appeal was dismissed.

Appeal dismissed.

Solicitors: *Lawrence & Joseph*

PROFESSOR DR. A.KAHAR BADOR & ORS. v. N. KRISHNAN & ORS. (NO. 2)

[O.C.J. (Hashim Yeop A. Sani J.) July 2, 1982]

[Kuala Lumpur – Civil Suit No. A 9 of 1982]

Practice and Procedure – Application to set aside writ – Disputes among members of co-operative society – Disputes should be referred to Registrar-General of Co-operative Societies – Co-operative Societies Ordinance, 1948, s. 49.

Co-operative Societies – Dispute between members – Reference to Registrar of Co-operative Societies – Co-operative Societies Ordinance, 1948, s. 49.

In this case the appellants had been elected members of the Committee of Management of a co-operative society at the Annual General Meeting of the Society. After the election results were announced a vote of no-confidence against the Committee of Management for the year 1982/1983 was passed. A temporary caretaker Committee of Management was elected from the floor pending the outcome of an enquiry to be held by the Registrar-General of Co-operative Societies. There had been charges of mismanagement and irregularities allegedly committed by members of the Committee of Management. The appellants applied for (1) a declaration that they are lawfully elected members of the Committee of Management of the Co-operative Society for the year 1982; (2) a declaration that the election of the defendants as members of the Committtee of Management of the said Society for the year 1982 was contrary to the By-laws of the society and void. The defendants applied to set aside the writ *inter alia* on the ground that the disputes between the members should be referred to the Registrar-General of Co-operative Societies for decision.

Held, the disputes were disputes which should be properly referred to the Registrar-General of Co-operative Societies and the writ should therefore be set aside.

Cases referred to:

(1) *Heard* v. *Pickthorne* [1913] 3 K.B. 299.

(2) *Subramaniam* v. *Tan Lee Leng & Ors.* [1980] 1 M.L.J. 171.

CIVIL SUIT.

Arma Singh Veriah (*Hew Pang Fei* with him) for the plaintiff.

N. Marjoribanks for the respondents.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This was an application to set aside the writ on two grounds namely:

1. That there is a dispute amongst the members or between some members and the former committee of Management for the year 1982/83 and that dispute shall under section 49 of the Co-operative Societies Ordinance 1948 be referred to the Registrar-General for decision.
2. That the issue of the Writ is premature as the remedies provided for by statute namely section 49 of the Co-operative Societies Ordinance 1948 have not been complied with.
3. That the Writ purporting to be issued in the name of the Third Plaintiff was issued without his authority.

The writ concerned was taken out on April 9, 1982 and the plaintiffs seek for (1) a declaration that they are lawfully elected members of the Committee of Management of The Mercantile Co-operative Thrift & Loan Society Limited, Selangor for the year 1982; and (2) a declaration that the election of the defendants as members of the Committee of Management of the said Society for the year 1982 was contrary to the By-laws of the said Society and void.

To resolve the problem it is necessary to understand the nature of the disputes involved as can be elicited from the affidavits. For this it would be necessary first of all to go to the background facts. The background facts to the writ that are not in dispute are briefly as follows:

The 48th Annual General Meeting of the Mercantile Co-operative Thrift & Loan Society Limited, Selangor (a registered society under the Co-operative Societies Enactment 1922 which was subsequently incorporated into the Co-operative Societies Ordinance and Rules 1948) was held on April 4 1982. In the course of discussion of items 1 to 5 in the agenda of the meeting dated March 15 1982 (exhibit AKB 8 attached to affidavit of A. Kahar Bador dated May 5, 1982), certain serious charges were levelled by certain members against the management of the Society. Items 3, 4 and 5 of the agenda dealt with the Annual Reports and Accounts for the years 1978, 1979 and 1980, the appropriation of profits as recommended by the Committee of Management and estimates of income and expenditure for the years 1981 and 1982. These charges against the Committee of Management related to alleged misuse of the Society's funds and other malpractices and irregularities. Consequent to the various charges of misuse and malpractices of the Society's funds made, a resolution was passed to report the matter to the Police and the Anti-Corruption Agency for investigation.

After the election results were announced a vote of no confidence against the Committee of Management for the year 1982/83 was passed. The Chairman then sought the advice of the representative of the Registrar-General of the Co-operatives who was present at the Annual General Meeting who then advised the Chairman that a temporary caretaker Committee of Management be elected from the floor pending the outcome of an enquiry to be held by the Registrar-General.

It was also alleged that notice of these charges against the Committee of Management was given to the Committee of Management well before the date of the Annual General Meeting. But the matter was not included in the agenda as required by law 57(7) of the Society.

Although beside these charges of mismanagement and irregularities allegedly committed by the Committee of Management there were also other charges pertaining to irregularities in the election of the first plaintiff and his qualification according to by-law 65 of the Society's by-laws, it would seem clear from the various affidavits that most of the charges related to the running of the affairs of the Society.

Section 49 of the Co-operative Societies Ordinance 1948 provides for the settlement of disputes. Since the disputes were substantially on the management of the affairs of the Society, the disputes fall squarely in my opinion under section 49(1)(a) of the Ordinance. Section 49(1)(a) reads as follows:

> "(1)If any dispute touching the business of a registered society arises –
>
> (a) among members, past members and persons claiming through members, past members and deceased members;"

such dispute shall be referred to the Registrar-General for decision.

The dispute described in section 49(1) of the Ordinance is any dispute "touching the business" of the Society. I interpret the words "the business of the Society" widely to include generally the running of the affairs of the Society. In my view the idea behind section 49 of the Ordinance is obviously to enable the Registrar-General to settle disputes relating to the internal affairs of the Society first before such dispute is allowed to come to the courts. This is clearly seen in the provision made in sub-section (2) of section 49 which reads as follows:

"The Registrar-General may, on receipt of a reference under subsection (1) of this section –

(a) decide the dispute himself;

(b) refer it for disposal to an arbitrator or arbitrators; or

(c) require the parties concerned to refer the dispute to a court."

Where the intention of the legislation is clear for a preference for a domestic remedy first then this privilege should be allowed and the court should be slow to interfere in the first instance.

The real disputes here which manifested themselves at the Annual General Meeting on April 4 1982 and still stand unresolved until today are not the legality of the incumbent Committee of Management but consequent upon the charges of mismanagement against the Committee of Management. A similar test was applied by the Court of Appeal in *Heard* v. *Pickthorne*[1] where at page 313 Bray J. said:

"The learned judge, I think, put the right question to himself, as to whether this was such an illegal act as the courts will interfere with and restrain, notwithstanding the arbitration provision; or whether it was a mere matter of internal administration. The mistake which I think he made was in coming to the conclusion that he did, that this was a matter of internal administration."

The issue there was the legality of a resolution which then gave the court the jurisdiction.

The powers of the Registrar-General of Co-operative Societies in matters of controlling and supervising co-operative societies are wide. Under section 49(2) of the Ordinance he may refer the dispute to an arbitrator or to the court. Under Rule 28 of the Co-operative Societies Rules 1948 the Registrar-General may rescind any resolution or action by an officer or committee or society which is, in his opinion, outside the object and scope of the society as defined in the by-laws of the Society.

In *Subramaniam* v. *Tan Lee Leng & Ors.*[2] the plaintiff applied for a declaration that the election of the defendants to the Management Committee of Co-operative Society was null and void. The matter there had in fact been referred to the Registrar-General and he had stated that the dispute be referred to the court in accordance with section 49(2)(c) of the Ordinance. The defendants however applied to the court to have the writ set aside. Salleh Abbas, F.J. dismissed the application. At page 172 he said:

"There is no need for me to refer to any authorities to decide this case as I take it that the law on this matter is very clear, in that the court will not entertain any judicial proceedings where remedies provided for by statute have not been complied with."

In my view the disputes in this case are disputes which should properly be referred to the Registrar-General. The disputes arose mainly as a result of the allegations of misappropriation and mismanagement by the Committee of Management of the Society. The Committee of Management of the Society was duly elected but did not have the confidence of the members attending the Annual General Meeting on April 4, 1982. At the same Annual General Meeting a care-taker committee was set up by the members present. There has however been no formal application to the court to challenge the legality of the Committee of Management elected at that meeting although there were charges of irregularities made in the affidavits on the election and the qualification of certain members.

There was apparently no denial of the allegation in the third ground of the application. The writ was accordingly set aside. Costs to applicants/defendants.

Order accordingly.

Solicitors: *Huang & Hew; Lovelace & Hastings.*